

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed amendment )	NOTICE OF PUBLIC HEARING
of ARM 2.59.1501, 2.59.1502, 2.59.1505, )	ON PROPOSED AMENDMENT
through 2.59.1508, 2.59.1512, and )	AND ADOPTION
2.59.1513 pertaining to the regulation of )	
deferred deposit lenders and the )	
proposed adoption of NEW RULES I )	
through VIII regarding affidavit of )	
borrower, rescinded loans, examinations, )	
suspension, and revocation of licenses, )	
protection of confidential borrower )	
information, department's cost of )	
administrative action, policy to implement )	
limitations on terms of credit to )	
servicemembers and dependents, and )	
examination fees )	

TO: All Concerned Persons

1. On October 11, 2007, at 8:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on October 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to [cromano@mt.gov](mailto:cromano@mt.gov).

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.1501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Acceptable practices at a business location" means complying with all applicable federal and state laws and the rules and regulations adopted pursuant thereto that pertain to deferred deposit lenders.

(1) and (2) remain the same, but are renumbered (2) and (3).

~~(3) (4) "Fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings" means embezzlement, money laundering, identity theft,~~

~~theft, and other financial related crimes and judgments.~~ "Fraudulent or dishonest dealings" includes, but is not limited to:

(a) financial misconduct prohibited by statutes governing deferred deposit lenders in this and other states and other segments of the financial services industry such as:

(i) securities brokerages;

(ii) banks and trust companies;

(iii) escrow offices;

(iv) title insurance companies; or

(v) other licensed or chartered financial institutions;

(b) civil actions or criminal offenses that involve deception, fraud, theft, misappropriation of funds, misrepresentation, omissions of material facts, unauthorized use of property, forgery, identity theft, or money laundering; and

(c) any other deceitful, false, or misleading representation or omission of material fact designed to be relied upon.

(4) and (5) remain the same, but are renumbered (5) and (6).

(7) "Restitution" may include, but is not limited to, refunds of any or all the interest, fees, and principal paid by the borrower.

AUTH: 31-1-702, MCA

IMP: 31-1-702, 31-1-705, 31-1-711, 31-1-713, 31-1-722, MCA

REASON: It is reasonably necessary for the division to propose section (1) in order to provide a definition for a term identified within 31-1-702(2), MCA. It is reasonably necessary to amend section (4) in order to provide further clarification of this term, which is relevant in considering the character of an applicant or licensee as required under 31-1-705(3), MCA. It is reasonably necessary for the division to propose section (7) since this term was included in Senate Bill 165, which passed during the 2007 Regular Legislative Session.

2.59.1502 APPLICATION PROCEDURE REQUIRED TO ENGAGE IN DEPOSIT LENDING (1) through (3)(c) remain the same.

(4) Except for those entities listed in (5), all persons or lenders must obtain a license under this rule in order to issue deferred deposit loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, ~~and~~ or the Title Loan Act, 31-1-801, MCA, are not exempt from the licensing requirements of 31-1-701, MCA.

(5) through (5)(e) remain the same.

AUTH: 31-1-702, MCA

IMP: 31-1-702, 31-1-705, 31-1-722, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1502 in order to clarify that an entity, which holds a consumer loan or title loan license, is not exempt from the provisions of the Montana Deferred Deposit Loan Act.

2.59.1505 EXAMINATION OF DEFERRED DEPOSIT LENDERS (1) The department ~~shall annually~~ may conduct an examination of each deferred deposit loan licensee's lending operations to ensure compliance with applicable both statute and administrative rule state and federal law and regulations adopted thereunder.

(2) The examination shall consist of a comprehensive review of the records, operations, and affairs of the licensee. The review shall include, but is not limited to, an inquiry into:

(a) through (2)(b)(iii) remain the same.

(3) All officer questionnaires must be answered within ten days of the start of the examination.

AUTH: 31-1-702, MCA

IMP: 31-1-701, 31-1-711, MCA

REASON: It is reasonably necessary for the division to amend section (1) to maintain consistency with amendments made to 31-1-711, MCA. An amendment in this section deleted the annual examination requirement, while leaving the examination frequency at the division's discretion. It is also reasonably necessary that the division's examination verify compliance with any federal laws applicable to deferred deposit loan transactions. It is reasonably necessary for the division to amend section (2) so that the division is not limited in its scope of information utilized in determining compliance with the Montana Deferred Deposit Loan Act. It is reasonably necessary for the division to propose section (3) in order to ensure that this information is received in a timely manner so that the examination may be concluded and the final report issued to the licensee.

2.59.1506 PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee or unlicensed person or entity:

(a) and (2) remain the same.

AUTH: 31-1-702, MCA

IMP: 31-1-702, 31-1-712, 31-1-713, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1506 in order to be consistent with the language provided in an amendment to 31-1-712, MCA. This amendment includes references to enforcement actions taken against unlicensed persons or entities. This amendment was passed as part of Senate Bill 165 during the 2007 Regular Legislative Session.

2.59.1507 REPORTS (1) The following must be reported to the department immediately:

(a) any instances of theft from the deferred deposit loan business ~~within ten days of discovery of the theft;~~

(b) any change in managers; ~~within ten days of each occurrence; and~~

~~(c) all officer questionnaires must be answered within ten days of the end of any examination.~~

- (c) any change in business location at least ten days prior to the move;
- (d) a change in the phone number of the business;
- (e) a change in the nature of the business;
- (f) a change in the board of directors or the principal officers;
- (g) a change in the share ownership of the company that could affect control;
- (h) the acquisition or disposition of another company;
- (i) any civil action involving fraud or dishonesty filed against the licensee;
- (j) any criminal charge filed against the licensee;
- (k) any change which would cause the department not to issue a license, if it had occurred before licensure; and
- (l) the addition of other business to be conducted at the location.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

REASON: It is reasonably necessary for the division to amend subsections (1)(a) and (b) to ensure that the information related to theft and a change in managers is immediately reported to the division. This immediate reporting is reasonably necessary given that this information is critical to the daily operations to a licensee. It is reasonably necessary for the division to propose subsections (1)(c) through (l) since this information is also relevant to the daily operations and financial stability of a licensee. It is then reasonably necessary that this information be reported to the division.

2.59.1508 SCHEDULE OF CHARGES (1) and (2) remain the same.

(3) Licensees conducting business through the Internet shall display, on a nonbypassable web page on its web site, its Montana license authorizing deferred deposit lending, and the fee schedule filed with the department. The web pages shall be displayed before a borrower may continue on to the application web page.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-721, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1508 to ensure that the schedule of charges be properly displayed to borrowers who obtain deferred deposit loans via the Internet. This schedule of charges must be disclosed to the borrower before they complete the loan transaction. Conducting business via the Internet has been specifically provided under 31-1-705, MCA which was amended as part of Senate Bill 165 during the 2007 Regular Legislative Session.

2.59.1512 ELECTRONIC DEDUCTIONS (1) through (3) remain the same.

(4) Only one account for each borrower may be authorized for electronic deductions related to a loan.

(5) A lender may not electronically deduct a partial payment from an account. Only the total of payment due (including the amount of the principal amount of the loan and fees) or nonsufficient funds fee may be deducted from the account.

AUTH: 31-1-702, MCA  
IMP: 31-1-703, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1512 in order to clarify the requirements on how licensees can make electronic deductions from a borrower's account. Sections (4) and (5) comply with the definition of a deferred deposit loan as set forth in 31-1-703(5), MCA.

2.59.1513 INCOME VERIFICATION (1) and (2) remain the same.

(3) The following information must be included on the verification of income:

(a) the borrower's name;

(b) the employer's name;

(c) check or pay date;

(d) the dates of the pay period covered; and

(e) the date on which the income verification was made.

(4) A bank statement is not an acceptable form of verification of income.

AUTH: 31-1-702, MCA  
IMP: 31-1-723, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.1513 in order to require that licensees accurately verify a borrower's income. This verification reflects on a borrower's ability to repay a deferred deposit loan. This verification is also required to ensure that a licensee does not make an unconscionable loan. An unconscionable loan is defined in 31-1-723(8), MCA, as a loan that exceeds 25% of the borrower's monthly net income.

4. The proposed new rules provide as follows:

NEW RULE I AFFIDAVIT OF BORROWER (1) The licensee shall have the borrower swear in a dated affidavit that the borrower has no outstanding deferred deposit loans. This affidavit shall be signed for each new deferred deposit loan. A copy of the affidavit shall be retained in the borrower's file.

AUTH: 31-1-702, MCA  
IMP: 31-1-723, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE I to ensure that licensees verify that a borrower has no other outstanding deferred deposit loans. An amendment made to 31-1-723(14), MCA, prohibits a licensee from entering into a deferred deposit loan with a customer who has an outstanding deferred deposit loan. This amendment was part of SB 165, which passed during the 2007 Regular Legislative Session.

NEW RULE II RESCINDED LOANS (1) The licensee shall keep separate records for all rescinded loans and retain those records according to records retention schedules as set by state or federal law, whichever is longer.

AUTH: 31-1-702, MCA

IMP: 31-1-714, 31-1-715, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE II to verify that licensees provide borrowers the right to rescind their loan as provided under 31-1-721(5)(a), MCA. Deferred deposit loan record retention requirements are set forth under 31-1-714, MCA. These requirements enable the division to determine if a licensee is complying with all provisions of the Montana Deferred Deposit Loan Act.

NEW RULE III EXAMINATIONS (1) Upon receiving a complaint or at its own discretion, the department may examine any office, place of business, or location where records may be found of any licensee or person who may be in violation of Title 31, chapter 1, part 7, MCA, or these rules. The department shall examine for compliance with the applicable state and federal law and all rules adopted thereunder.

(2) At the end of an examination, the department shall provide the examinee with an oral and written report which details the areas examined and any deficiencies found.

AUTH: 31-1-702, MCA

IMP: 31-1-711, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE III in order to clarify its authority and procedure in conducting examinations of licensed deferred deposit lenders. This authority and discretion to conduct these examinations is specifically authorized under 31-1-711, MCA.

NEW RULE IV SUSPENSION AND REVOCATION OF LICENSES (1) The department may suspend or revoke a license of an entity that does not correct the deficiencies found by the department after an examination within the time frame granted by the department.

AUTH: 31-1-702, MCA

IMP: 31-1-712, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE IV to ensure that licensees comply with the findings set forth with an examination. It is reasonably necessary that the division suspend or revoke a license if a deferred deposit lender does not take action to correct deficiencies identified in an examination. This authority has been provided for under 31-1-712, MCA.

NEW RULE V PROTECTION OF CONFIDENTIAL BORROWER

INFORMATION (1) All licensees shall adopt, implement, and ensure compliance with written guidance addressing safeguarding, proper destruction, and breach of confidential borrower information as required by:

(a) Title 30, chapter 14, part 17, MCA; and

(b) 16 CFR 314, as those rules were published in the May 23, 2002, Federal Register at 67 FR 36493 which are adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Any violation of this rule is grounds for fines, suspension, or revocation of license.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE V in order to ensure that licensees safeguard customer information. This new rule will require licensees to properly dispose of this information so that a customer's personal information is not compromised. NEW RULE V affords greater protection to borrowers and sets forth that violation of this rule is grounds for enforcement action.

NEW RULE VI DEPARTMENT'S COST OF ADMINISTRATIVE ACTION

(1) The department may order reimbursement of its costs of bringing the administrative action which may include but are not limited to:

(a) examiner time charges;

(b) department legal counsel time charges;

(c) administrative law judge charges;

(d) court reporter costs;

(e) transcription fees;

(f) document preparation fees;

(g) other hearing costs; and

(h) transportation costs.

AUTH: 31-1-702, MCA

IMP: 31-1-712, MCA

REASON: It is reasonably necessary for the division to propose New Rule VI to clarify which types of costs may be reimbursed to the division in the course of bringing an administrative action against a deferred deposit lender. This reimbursement was authorized by an amendment made to 31-1-712, MCA. This amendment was part of Senate Bill 165, which was passed during the 2007 Regular Legislative Session.

NEW RULE VII POLICY TO IMPLEMENT LIMITATIONS ON TERMS OF CREDIT TO SERVICEMEMBERS AND DEPENDENTS (1) All licensees shall implement a policy applying the provisions of the limitation of terms of credit to

servicemembers and dependents as required by the John Warner National Defense Authorization Act for Fiscal Year 2007 Section 670, P.L. 109-364 which is adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Pursuant to that Act, any credit agreement, promissory note, or other contract prohibited by the Act is void from the inception.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

REASON: It is reasonably necessary for the division to propose New Rule VII in order to verify that licensees are complying with the provisions of the Defense Authorization Act, which will afford greater consumer protection to servicemembers and their dependents. This Act restricts fees that may be charged to servicemembers and their dependents by licensees.

NEW RULE VIII EXAMINATION FEES (1) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the deferred deposit lender may be suspended or revoked until the fees are paid.

AUTH: 31-1-702, MCA

IMP: 31-1-711, MCA

REASON: It is reasonably necessary for the division to propose New Rule VIII to ensure that a deferred deposit loan licensee remits payment for examinations conducted by the division in a timely manner. The division is authorized to charge an examination fee to licensees pursuant to 31-1-711, MCA.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [kosullivan@mt.gov](mailto:kosullivan@mt.gov), and must be received no later than October 19, 2007.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons



should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator John Brueggeman, the primary bill sponsor of SB 165 (2007), was notified on July 27, 2007, by regular mail.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State September 10, 2007.